



BILLING CODE 8011-01p

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95225; File No. SR-CBOE-2022-034]

### **Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update its Fees Schedule in Connection with the Exchange's Plans to List and Trade FLExible EXchange Index Options with an Index Multiplier of One**

July 8, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2022, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to update its Fees Schedule in connection with the Exchange's plans to list and trade FLExible

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

EXchange (“FLEX”) index options with an index multiplier of one (“FLEX Micro Options”). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with its plans to list and trade FLEX Micro Options.<sup>3</sup>

By way of background, the Exchange has adopted rules to accommodate the listing and trading of certain FLEXible EXchange (“FLEX”) index options with an index multiplier of one (“FLEX Micro Options”) rather than the conventional 100. FLEX Micro Options will be available on the following indices effective June 27, 2022: S&P

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<sup>3</sup> The Exchange initially filed the proposed fee changes on June 27, 2022 (SR-CBOE-2022-031). On June 28, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-033. On June 30, 2022 the Exchange withdrew that filing and submitting this filing.

500, Russell 2000 (RUT), Dow Jones Industrial Average (DJX), MSCI Emerging Markets (MXEF), and MSCI EAF (MXEA). The Exchange believes FLEX Micro Options will expand investors' choices and flexibility by listing and trading FLEX options on larger-valued broad-based indexes, which provide investors with the ability to gain exposure to the market, with a notional value of 1/100th of the value of currently available FLEX Index Options. The Exchange believes the additional granularity provided by FLEX Micro Options with respect to the prices at which investors may execute and exercise index options on the Exchange will appeal to institutional investors by providing them with an additional exchange-traded tool to manage the positions and associated risk in their portfolios more precisely based on notional value, which currently may equal a fraction of a standard contract. The Exchange now proposes to amend its Fees Schedule to accommodate the planned listing and trading of FLEX Micro options.

#### Standard Transaction Rates

First, the Exchange proposes to adopt certain standard transaction fees in connection with FLEX Micro Options. Specifically, the proposed rule change adopts certain fees for FLEX Micro Options in the "Rate Table for All Products Excluding Underlying Symbol A"<sup>4</sup>. The Exchange notes that the proposed standard transaction fees in connection with FLEX Micros Options are lower-priced than standard FLEX options on the corresponding indices given their multiplier of one (as compared to 100 for standard FLEX options). Indeed, the proposed transaction fees are generally near, or approximately, 1/100th of the fees currently assessed for the corresponding standard

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<sup>4</sup> Underlying Symbol List A currently includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX. See Cboe Options Fees Schedule, Footnote 34.

FLEX options (inclusive of the Execution Surcharge, License Surcharges and FLEX Surcharges, as applicable). The proposed fees are as follows:

*RUT FLEX Micro Options*

- Adopts fee code GA, appended to all (i) Customer (capacity “C”), (ii) Market-Maker (capacity “M”), and (iii) Clearing Trading Permit Holders (“TPHs”) (capacity “F”) and Non-Clearing TPH Affiliates (capacity “L”)(collectively, “Firms”) orders in RUT FLEX Micro Options and assesses a fee of \$0.009 per contract.
- Adopts fee code GB, appended to all Broker-Dealers (capacity “B”), Joint Back-Offices (capacity “J”), Non-Trading Permit Holder Market-Makers (capacity “N”), and Professionals (capacity “U”) (collectively, “Non-Customers”) manual and AIM (Agency/Primary and Contra) orders in RUT FLEX Micro Options and assesses a fee of \$0.009 per contract.; and
- Adopts fee code GC, which is appended to all Non-Customer electronic orders in RUT FLEX Micro Options and assesses a fee of \$0.012 per contract.

*SPX FLEX Micro Options*

- Adopts fee code GE, appended to all (i) Customer and (ii) Firm orders in SPX FLEX Micro Options and assesses a fee of \$0.008 per contract;
- Adopts fee code GF, appended to all Market-Maker orders in SPX FLEX Micro Options and assesses a fee of \$0.006 per contract; and
- Adopts fee code GD, which is appended to all appended to all Non-Customer orders in SPX FLEX Micro Options and assesses a fee of \$0.009 per contract.

*MXEA and MXEF FLEX Micro Options*

- Adopts fee code GG, appended to all Customer orders in MXEA and MXEF FLEX Micro Options and assesses a fee of \$0.004 per contract;
- Adopts fee code GI, appended to all (i) Firm and (ii) Non-Customer electronic orders in MXEA and MXEF FLEX Micro Options and assesses a fee of \$0.010 per contract;
- Adopts fee code GH, appended to all Market-Maker manual, electronic and AIM Agency/Primary orders in MXEA and MXEF FLEX Micro Options and assesses a fee of \$0.005 per contract;
- Adopts fee code GK, appended to all (i) Firm and (ii) Non-Customer manual and AIM Agency/Primary orders in MXEA and MXEF FLEX Micro Options and assesses a fee of \$0.005 per contract;
- Adopts fee code GL, appended to all (i) Firm, (ii) Market-Maker and (iii) Non-Customer AIM Contra orders in MXEA and MXEF FLEX Micro Options and assesses a fee of \$0.003 per contract; and
- Adopts fee code GN, appended to all (i) Firm, (ii) Market-Maker and (iii) Non-Customer AIM Response orders in MXEA and MXEF FLEX Micro Options and assesses a fee of \$0.013 per contract.

*DJX FLEX Micro Options*

- Adopts fee code GG, appended to all Customer orders in DJX FLEX Micro Options and assesses a fee of \$0.004 per contract;
- Adopts fee code GJ, appended to all (i) Firm and (ii) Non-Customer electronic orders in DJX FLEX Micro Options and assesses a fee of \$0.007 per contract;

- Adopts fee code GH, appended to all Market-Maker manual, electronic and AIM Agency/Primary orders in DJX FLEX Micro Options and assesses a fee of \$0.005 per contract;
- Adopts fee code GK, appended to all (i) Firm and (ii) Non-Customer manual and AIM Agency/Primary orders in DJX FLEX Micro Options and assesses a fee of \$0.005 per contract;
- Adopts fee code GL, appended to all (i) Firm, (ii) Market-Maker and (iii) Non-Customer AIM Contra orders in DJX FLEX Micro Options and assesses a fee of \$0.003 per contract; and
- Adopts fee code GM, appended to all (i) Firm, (ii) Market-Maker and (iii) Non-Customer AIM Response orders in DJX FLEX Micro Options and assesses a fee of \$0.007 per contract.

#### *Surcharges*

The Exchange does not propose to apply any current surcharges to FLEX Micro options.<sup>5</sup> Particularly, the Exchange proposes to exclude FLEX Micro Options from the surcharges set forth in the Rate Table for All Products Excluding Underlying Symbol List A (i.e., the Complex Surcharge Fee, the Surcharge Fee Index License and the FLEX Surcharge Fee). The Exchange proposes to amend corresponding footnotes 35, 14, and 17, respectively, to make clear FLEX Micro Options transactions are excluded from these surcharges.

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<sup>5</sup> The Exchange notes the Trading Processing Services Fee, which is currently assessed a rate of \$0.0025 per contract side, will apply to FLEX Micro Options.

## Fee Programs

The Exchange proposes to exclude FLEX Micro Options from all pricing programs. The Exchange notes that because FLEX Micro Options are all options on broad-based indices, the majority of the proposed changes amend the Fees Schedule in connection with trading in FLEX Micro Options in a manner that is generally consistent with the way in which many existing fee programs currently do not apply to trading standard options on those same indices. Additionally, the Exchange notes that the majority of the proposed changes also amend the Fees Schedule in a manner that is generally consistent with the way in which existing fee programs currently do not apply to trading in another options product that has an index multiplier of one and thus a smaller notional value (i.e., NANOS<sup>6</sup>).

First, the Exchange proposes to adopt footnote 33 (and append to fee tables as applicable and needed) to make clear that FLEX Micro Options volume will be excluded from the following programs<sup>7</sup>: (i) SPX/SPXW and SPESG Liquidity Provider Sliding

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<sup>6</sup> NANOS options are options on the Mini-S&P 500 (“XSP”) Index (the value of which is 1/10th the value of the S&P 500 (“SPX”) Index) that have an index multiplier of one.

<sup>7</sup> The Exchange proposes to eliminate the current language under footnote 33 relating to billing information for October 2019, as it is no longer relevant or needed, and replace it with the proposed new language. Footnote 33 is already appended to the following tables in the Fees Schedule: SPX/SPXW and SPESG Liquidity Provider Sliding Scale, Liquidity Provider Sliding Scale, Liquidity Provider Sliding Scale Adjustment Table, Volume Incentive Program, Affiliate Volume Plan, Clearing Trading Permit Holder Proprietary Products Sliding Scale, Clearing Trading Permit Holder VIX Sliding Scale, and Select Customer Options Reduction (“SCORE”) Program. The Exchange is maintaining the appended references to footnote 33 in each of these tables, other than the Clearing Trading Permit Holder VIX Sliding Scale, as footnote 33 will continue to be applicable to the programs as such programs will be listed in proposed footnote 33 as a program where FLEX Micro options is excluded. Because the Exchange is not offering a VIX FLEX Micro Option product at this time, the Clearing Trading

Scale, which offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on Market-Maker volume in SPX, SPXW and SPESG, (ii) the Liquidity Provider Sliding Scale, which offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on total national Market-Maker volume in all underlying symbols, excluding Underlying Symbol List A, MRUT, NANOS and XSP during the calendar month, (iii) the Liquidity Provider Sliding Scale Adjustment Table, which provides that Taker fees be applied to electronic “Taker” volume and a Maker rebate be applied to electronic “Maker” volume, in addition to the transaction fees assessed under the Liquidity Provider Sliding Scale, (iv) the Volume Incentive Program (“VIP”), which offers a per contract credit for certain percentage threshold levels of monthly Customer volume in all underlying symbols, excluding Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS and XSP, (v) Break-Up Credits, which provides credits to orders executed in AIM, SAM, FLEX AIM, and FLEX SAM to all products except Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS and XSP, (vi) Marketing Fee, which is assessed on transactions of Market-Makers resulting from Customer orders in all products except Sector Indexes, DJX, MRUT, MXEA, MXEF and Underlying Symbol List A<sup>8</sup>, (vii) the Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale, which provides transaction fees for Firms in Underlying Symbol List

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Permit Holder VIX Sliding Scale is not applicable and the Exchange therefore proposes to eliminate the current reference to footnote 33 that currently is appended to that table.

<sup>8</sup> The Exchange notes that the Marketing Fee already excludes all FLEX Options. See Cboe Options Fees Schedule, Marketing Fee Table. The Exchange still proposes to append proposed footnote 33 to the Marketing Fee Table for further clarity as to applicability of the exclusion for FLEX Micros Options.



A will be reduced provided a Firm reaches certain average daily volume (“ADV”) thresholds, (vii), Clearing TPH Fee Cap, which provides a cap on Firm transaction fees, (viii), Select Customer Options Reduction (“SCORE”) Program, which is a discount program for Retail, Customer volume in SPX, SPXW, VIX, RUT, MXEA, and MXEF<sup>9</sup>, (ix) Customer Large Trade Discount, which provides a discount in the form of a cap on transaction fees for certain Customer executions, (x) Market-Maker Tier Appointment Fees, which assesses per permit surcharges if Market-Makers meet certain volume thresholds in SPX/SPX, VIX and RUT, respectively, (xi) Floor Broker Trading Surcharge, which assesses a surcharge to Floor Brokers if they execute a certain threshold in SPX/SPXW and VIX volume, respectively, (xii) Floor Broker Sliding Scale Rebate Program, offers rebates for Firm Facilitated and non-Firm Facilitated orders that correspond to certain volume tiers and is designed to incentivize order flow in multiply-listed options to the Exchange’s trading floor, (xiii) Floor Broker ADV Discount, which provides Floor Brokers rebates on their Trading Permit fees based on ADV thresholds, (xiv) Floor Brokerage Fees, which provides discounted rates to executing brokers for cross and non-crossed orders in OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX/SPXW, SPESG and VIX, (xv) Floor Brokerage Fees Discount Scale, which provides Floor Brokers opportunity to receive discounts on fees for orders in OEX, XEO, RUT, SPX, SPXW, SPESG, VIX based on meeting certain volume thresholds, (xvi) GTH Executing Agent Subsidy Program which provides designated GTH executing agents a

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<sup>9</sup> The Exchange notes that the SCORE program already excludes all FLEX Options. See Cboe Options Fees Schedule, SCORE Table. The Exchange still proposes maintain footnote 33, which is currently appended to the SCORE Table, for further clarity as to applicability of the exclusion for FLEX Micros Options.

monthly subsidy based on GTH monthly Customer volume thresholds, (xvii) Order Router Subsidy Program and Complex Order Router Subsidy Program, which provides that Participating TPHs or Participating Non-Cboe TPHs may receive a payment from the Exchange for every executed contract routed to the Exchange through their system in certain classes and (xviii) Frequent Trader Program, which provides an opportunity for customer orders to receive rebates based on meeting different volume thresholds in SPX/SPXW, VIX and RUT.

The Exchange also proposes to update footnote 6, which is appended to the Liquidity Provider Sliding Scale Program, Liquidity Provider Sliding Scale Adjustment Table, Affiliate Volume Plan, VIP, SCORE and the ORS/CORS Programs and footnote 36 which is appended to VIP. Specifically, current footnotes 6 and 36 provides that in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options that lasts longer than 60 minutes, the Exchange will adjust the national volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, NANOS, DJX, and XSP for the entire trading day. The Exchange proposes to add FLEX Micro Options to the exclusion list.

The Exchange also proposes to clarify in footnote 11, that for facilitation orders (other than Sector Indexes (47), FLEX Micros and Underlying Symbol List A (34)) executed in open outcry, Cboe Options will assess no Clearing Trading Permit Holder Proprietary transaction fees, as proposed fee codes for Firm orders in FLEX Micro transactions will supersede facilitation fee codes (currently FF or FI) for any facilitation orders in FLEX Micro Options.

The Exchange notes that a few of the programs listed above in which FLEX Micros will be excluded also exclude and enumerate other products in the respective program's table header, notes section and/or corresponding footnote. Where such exclusions are listed, the Exchange proposes to add references to FLEX Micros to make clear that, as discussed above and as will be reflected in proposed [sic] 33, FLEX Micros are also excluded from the applicable program. Accordingly, the Exchange proposes to add a reference to FLEX Micros to the exclusion lists set forth in each of the following respective program table headers, notes sections and/or footnotes: Liquidity Provider Sliding Scale notes section, VIP header, Break-Up Credits header, Marketing Fee notes section, Floor Broker Sliding Scale Rebate Program notes section, ORS and CORS notes sections, footnote 10, footnote 11, footnote 22, footnote 29, footnote 30, and footnote 36.

#### Clarifying Changes

The Exchange lastly proposes to amend footnotes 18, 19 and 20 of the Fees Schedule. The foregoing footnotes describe the AIM Contra Execution Fee, the AIM Agency/Primary Fee and the AIM Responder Fee, respectively. The Exchange proposes to revise the current language in each footnote to make clear that applicable standard transaction fees apply for all orders executed in the Automated Improvement Mechanism ("AIM"), Solicitation Auction Mechanism ("SAM"), FLEX AIM and FLEX SAM auctions (that were initially entered as (i) the contra party to an Agency/Primary Order, (ii) the Agency/Primary Order, or (iii) an AIM Response, respectively) unless otherwise indicated in the Rate Tables. The Exchange does not believe it is necessary to list the applicable products or exclusions in the footnotes, as the Rate Tables in the Fees Schedule already detail what fee codes and corresponding fees apply for each of these

transactions for each capacity and product. The Exchange believes the proposed change eliminates unnecessary redundancy and eliminates potential confusion.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>12</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendments to the Fees Schedule in connection with standard transaction rates for FLEX Micro Options transactions are reasonable, equitable and not unfairly discriminatory. Specifically, the Exchange believes that it is reasonable to assess fees for Customer, Market-Maker, Firm and Non-Customer

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f.(b)(5).

orders in FLEX Micro Options that are less than those fees for transactions in the corresponding standard RUT, SPX, MXEF, MXEA and DJX FLEX options (all of which overly the same respective indices as the proposed FLEX Micro Options) because FLEX Micro Options have a smaller notional value given their multiplier of one. Moreover, the Exchange believes the proposed transaction fees are reasonable as such fees reflect approximately 1/100<sup>th</sup> of the transaction fees (inclusive of surcharges) assessed for the corresponding transactions in standard RUT, SPX, MXEF, MXEA and DJX FLEX options, which as discussed have a multiplier of 100 instead of one like FLEX Micro Options. The Exchange believes its reasonable to exclude FLEX Micro Options from additional surcharges as TPHs will not be subject to such surcharges.

The Exchange believes the proposed standard transaction rates and exclusion from certain surcharges are equitable and not unfairly discriminatory because they will apply automatically and uniformly to all capacities as applicable (i.e., Customer, Market-Make, Firm and Non-Customer), in FLEX Micro Options. The Exchange also notes that with respect to lower transaction rates for Customer transactions in certain FLEX Micro Options, there is a history in the options markets of providing preferential treatment to customers and customer order flow attracts additional liquidity to the Exchange, providing market participants with more trading opportunities and signaling an increase in Market-Maker activity, which facilitates tighter spreads. This may cause an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem, particularly in a newly listed and traded product. The Exchange also believes that it is equitable and not unfairly discriminatory to propose lower transaction rates for certain Market-Maker and Firm

orders in certain FLEX Micro Options because the Exchange recognizes that these market participants can provide key and distinct sources of liquidity, which is particularly important for a newly listed and traded options class on the Exchange. An increase in general market-making activity facilitates tighter spreads, which tend to signal additional corresponding increase in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants. Similarly, the Exchange also recognizes that Firms can be an important source of liquidity when they facilitate their own customers' trading activity, thus, adding transparency and promoting price discovery to the benefit of all market participants. The Exchange notes too that Market-Makers and Firms take on a number of obligations that other market participants do not have. For example, unlike other market participants, Market-Makers take on quoting obligations and other market making requirements and Firms must have higher capital requirements, clear trades for other market participants, and must be members of OCC. The Exchange also notes the proposal to not assess surcharges to FLEX Micro Options is equitable and not unfairly discriminatory as it applies to all market participants (i.e., no market participant will be subject to those surcharges).

The Exchange believes that the proposed updates to the Fees Schedule in connection with the application (or rather exclusion) of fee programs to transactions in FLEX Micro Options are reasonable, equitable and not unfairly discriminatory. Particularly, the Exchange believes it is reasonable to exclude transactions in FLEX Micro Options from the: Liquidity Provider Sliding Scale, Liquidity Provider Sliding Scale Adjustment Table, Volume Incentive Program, Break-Up Credits, Affiliate Volume

Plan, Clearing Trading Permit Holder Fee Cap, Floor Broker Sliding Scale Rebate Program, Program, and the ORS and CORS Programs in the same manner in which standard options on those same indices are excluded. The Exchange believes that excluding FLEX Micro Options transactions from certain fees programs is equitable and not unfairly discriminatory because the programs will equally not apply to, or exclude in the same manner, all market participants' orders in FLEX Micro Options. The Exchange believes it's reasonable, equitable and not unfairly discriminatory to exclude FLEX Micro transactions from the Marketing Fee and SCORe program as such programs similarly already exclude FLEX Options. Lastly, the Exchange believes it's reasonable equitable and not unfairly discriminatory to exclude FLEX Micro Options from the SPX/SPXW and SPESG Liquidity Provider Sliding Scale, Clearing Trading Permit Holder Proprietary Products Sliding Scale, Customer Large Trade Discount, Market-Maker Tier Appointment Fee thresholds, Floor Broker Trading Surcharge thresholds, Floor Broker ADV Discount, Floor Brokerage Fees Discount Scale, Floor Brokerage Fees, Frequent Trader, and the GTH Executing Agent Subsidy because the Exchange is not obligated to include any particular product in such pricing programs, and the exclusion applies to all market participants uniformly. Moreover, the Exchange notes that the proposed rule change does not alter any of the existing program rates or volume calculations, but instead, merely proposes not to include transactions in FLEX Micro Options in those programs and volume calculations.

The Exchange lastly believes the proposed updates to footnotes 18, 19 and 20 of the Fees Schedule makes the footnotes easier to read, eliminates redundancy between the Rate Tables and the footnotes and alleviates potential confusion as to the applicability of

AIM-related fees, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its Fee Schedule will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed FLEX Micro Options transaction fees for the separate types of market participants will be assessed automatically and uniformly to all similarly situated market participants. The Exchange again notes that there is a history in the options markets of providing preferential treatment to Customers, Market-Makers and Firms, as described above in the statutory basis section. Further, the proposed rule change will uniformly exclude all transactions in FLEX Micro Options from certain programs and fees/surcharges as it currently does for many of the Exchange's other proprietary products, including another product with a one multiplier (i.e., NANOS).

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to products exclusively listed on the Exchange. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are



available for trading. Based on publicly available information, no single options exchange has more than 16% of the market share of executed volume of options trades.<sup>13</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>14</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>15</sup> Accordingly, the Exchange does not believe its proposed changes to the

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<sup>13</sup> See Cboe Global Markets, U.S. Options Market Volume Summary by Month (June 24, 2022), available at [http://markets.cboe.com/us/options/market\\_share/](http://markets.cboe.com/us/options/market_share/).

<sup>14</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>15</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4<sup>17</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f).

- Use the Commission's Internet comment form  
(<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2022-034 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2022-034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-CBOE-2022-034 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-14997 Filed: 7/13/2022 8:45 am; Publication Date: 7/14/2022]

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<sup>18</sup> 17 CFR 200.30-3(a)(12).